



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	02/19/14	Bill No:	<a href="#">Assembly Bill 1954</a>
Tax Program:	Fire Prevention Fee	Author:	Harkey
Sponsor:	BOE Member Runner	Code Sections:	PRC Sections 4213, 4224, 4225, and 4228
Related Bills:	Assembly Bill 1519 (Donnelly) Assembly Bill 2048 (Dahle) Senate Bill 1413 (Wyland)	Effective Date:	01/01/15

## **BILL SUMMARY**

This bill changes the finality date of an order or decision on a petition for redetermination from 30 to 90 days and, within that 90 days, allows a feepayer to appeal to the BOE any determination that denies all or part of a refund.

## **ANALYSIS**

### **CURRENT LAW**

**Fire Prevention Fee.** Existing law<sup>1</sup> requires the Board of Equalization (BOE) to collect an annual fire prevention fee in accordance with the Fee Collection Procedures Law (FCPL).<sup>2</sup> The fee benefits the California Department of Forestry and Fire Protection (CAL FIRE), which is responsible for fire prevention and suppression in areas that the State Board of Forestry and Fire Protection (Fire Board) has determined are state responsibility areas (SRAs). As required,<sup>3</sup> the Fire Board adopted emergency regulations to establish a fire prevention fee. The fee amount is not permitted to exceed \$150 per habitable structure on a parcel located within an SRA, except as it is adjusted annually by the Fire Board. Public Resources Code (PRC) Section 4102 defines an SRA as an area over which the Fire Board determines that the prevention and suppression of fires is primarily the financial responsibility of the state. PRC Section 4125 requires the Fire Board to classify all state lands and determine the areas in which the state has primary financial responsibility for fire prevention and suppression.

Beginning July 1, 2013, the Fire Board must annually adjust the fire prevention fee.<sup>4</sup> The adjustment reflects the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States. While the Fire Board set the fiscal year (FY) 2013-14 fee at \$152.33, most bills will be for \$117.33 as most owners will receive a \$35 reduction in the fee.<sup>5</sup>

<sup>1</sup> Public Resources Code (PRC) Section 4213.

<sup>2</sup> Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code (RTC).

<sup>3</sup> PRC Section 4212(a).

<sup>4</sup> PRC Section 4212(b).

<sup>5</sup> If a habitable structure is also within the boundaries of a local agency that provides fire protection services, the owner will receive a \$35 reduction for each habitable structure. Over 90% of habitable structures in an SRA are also covered by a local fire protection agency.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*

**Collection and Administration.** Commencing with FY 2011-12, the BOE collects the fire prevention fee annually. The FCPL governs the BOE's collection function.

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

By each January 1, CAL FIRE transmits to the BOE the name, address, and assessment amount of each person liable for the fee. In addition, CAL FIRE provides to the BOE a telephone number that fee payers may use to obtain responses to their fee questions.

Annual fire prevention fee assessments are due and payable to the BOE 30 days after assessment. The amount assessed becomes final at the end of the 30-day period, unless a fee payer files a petition for redetermination within that period. If a fee payer files a timely petition for redetermination, all legal collection actions are held until CAL FIRE's final determination.

The BOE lacks authority to decide or review any petition for redetermination or claim for refund of a fee that CAL FIRE determines is due. CAL FIRE handles all appeals, and for those cases in which CAL FIRE determines the person is entitled to a refund, that person may file a refund claim with the BOE.<sup>6</sup>

The fire prevention fee may not be collected if, in any given fiscal year, the SRA Fire Prevention Fund (Fund) has sufficient funds to finance specified prevention activities. The law requires the Fund to be used to cover any startup costs incurred over a two-year period.

#### PROPOSED LAW

This bill changes the finality date of an order or decision by CAL FIRE on a petition for redetermination from 30 to 90 days and, within that 90 days, allows a fee payer to appeal to the BOE any order or decision that denies all or part of a refund.

CAL FIRE will continue to decide petitions for redetermination based on the assertion that CAL FIRE improperly calculated the amount of the fee or incorrectly determined that the person is subject to the fee. However, this bill authorizes the BOE to set aside any order or decision that denies all or part of a refund pursuant to the provisions added to Section 4224.

**BOE Refund Administration.** Under the bill, only those CAL FIRE orders or decisions upon a petition for redetermination that denies all or part of a refund of fees, penalties, or interest, may be appealed in writing to the BOE.

CAL FIRE's notice of redetermination provided to the fee payer must include the date determined by CAL FIRE as the last day the fee payer is able to file an appeal to the BOE. Those appeals filed with the BOE by the specified date will be treated as timely filed. Legal collection actions will be stayed for all timely filed appeals pending the final decision by the BOE.

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<sup>6</sup> PRC Section 4213(a)(3)(A) and (B) does not allow BOE to accept claims for refund on the basis that the person is not subject to the fee, or that the fee is improperly calculated. However, the BOE may directly process certain administrative refund claims (e.g. overpayments).

At any time prior to the BOE issuing a decision regarding the appeal, a feepayer may amend the appeal to provide additional documentation or state additional grounds on which the appeal is based. The feepayer must provide two copies of the appeal and two copies of supporting documentation to the BOE. The BOE will provide CAL FIRE with a copy of the appeal and any related documents.

BOE staff will reconsider the amount determined to be due and decide the appeal. Both the feepayer and CAL FIRE will be notified of the BOE decision. If the feepayer has requested an oral hearing, the BOE Members will hear and decide the refund appeal.

Appeals to the BOE apply to any notice of assessment that is mailed after December 31, 2014. The bill itself would become effective on January 1, 2015.

#### BACKGROUND

On July 7, 2011, Governor Brown signed ABx1 29,<sup>7</sup> which required the BOE to collect the new fire prevention fee, commencing with FY 2011-12. However, collection of the fee was delayed due to several factors, including adoption of the emergency regulations and the costs of implementation.

Governor Brown's signing message for ABx1 29 states, in part, "A fee consistent with the 'beneficiary pays principle,' such as the one intended in this bill, can achieve significant General Fund savings. However, as currently drafted, the revenues may not materialize. I am directing the Department of Finance and CAL FIRE to work with the Legislature during the remaining legislative session to identify necessary clean-up language to realize these revenues."

Since then, numerous unsuccessful bills have been introduced to repeal, replace, or provide a fire fee exemption. Bills introduced during the last two legislative sessions include:

Bill No.	Session	Author	Fire Fee Bills
AB 23	2013-14	Donnelly	Proposed repeal of the fire prevention fee.
AB 124	2013-14	Morrell	Proposed repeal of the fire prevention fee.
AB 468	2013-14	Chesbro	Would have repealed the fire prevention fee and replaced it with a 4.8% surcharge on commercial and residential fire and multi-peril insurance policy premiums.
AB 929	2013-14	Jones	Was intended to implement reimbursement procedures for persons who have paid a fire prevention fee covering a structure that was previously in an SRA, but that was determined to no longer be within an SRA's boundaries.
SB 17	2013-14	Gaines	Legislative intent to repeal the fire prevention fee.
SB 125	2013-14	Gaines	Proposed exemption from the fire prevention fee for those properties with a habitable structure that lies within both an SRA and the boundaries of a local fire district that provides fire protection service.

<sup>7</sup> Chapter 8, Stats. 2011.

SB 147	2013-14	Gaines	Proposed exemption from the fire prevention fee for those property owners with income of less than 200% of the federal poverty level.
ABx1 24	2011-12	Blumenfield	Proposed a fire protection fee to fund fire suppression and prevention and emergency response efforts in SRAs.
ABx1 45	2011-12	Jeffries	Proposed repeal of the fire prevention fee.
AB 1506	2011-12	Jeffries and Cook	Proposed repeal of the fire prevention fee.
AB 2474	2011-12	Chesbro	Proposed a credit of up to \$150 against the fire prevention fee of amounts paid to a local agency for fire protection services.
SB 1040	2011-12	Evans	Proposed repeal of the fire prevention fee.

## COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by BOE Member George Runner and is intended to provide an additional, unbiased level of protection by allowing feepayers to appeal to the BOE.
- 2. The BOE has extensive experience in deciding appeals for BOE administered tax and fee programs and the FTB administered corporate franchise and personal income tax.** Currently, the BOE administers more than 30 tax and fee programs; most of which provide an appeal process applicable to a petition for redetermination or a claim for refund.<sup>8</sup> With respect to a refund claim, BOE staff will recommend either that the claim be (a) granted in its entirety, or (b) granted in part and denied in part, or (c) denied in its entirety. If the claimant disagrees with either the partial refund or the denial of the entire refund, the claimant may request reconsideration of the BOE staff decision. Generally, the request for reconsideration is granted and consists of an appeals conference and/or an oral hearing before the BOE Members.<sup>9</sup>

Current state income tax law<sup>10</sup> provides that within 90 days from the mailing of a notice of FTB's action on a refund claim, a taxpayer may file a written appeal to the BOE. The taxpayer must provide two copies of the appeal and any supporting documentation to the BOE, which in turn provides a copy to the FTB.<sup>11</sup> The BOE Members hear and determine the appeal and notify both the taxpayer and the FTB

<sup>8</sup> These programs are administered under the following laws: Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and the Diesel Fuel Tax Law.

<sup>9</sup> Article 3 (Claims for Refund), of Chapter 2, of Division 2.1 (Rules for Tax Appeals), of Title 18 of the California Code of Regulations.

<sup>10</sup> RTC Section 19324

<sup>11</sup> RTC Section 19332

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of the determination.<sup>12</sup> The BOE decision is final 30 days from the date of the determination unless either the taxpayer or the FTB files a petition for rehearing. After any rehearing, the BOE decision is final 30 days from the date the BOE issues its opinion on the rehearing.<sup>13</sup>

**3. This bill would expand the BOE's role beyond its core functions.** According to information from CAL FIRE, an acceptable petition for redetermination may be filed to determine whether:

- the structure is actually located within an SRA;
- the correct number of habitable structures on the parcel have been charged the fee;
- the calculated fee amount includes the \$35 per structure credit for a location within an area that receives local fire protection services;
- the correct property owner has been assessed the fee; and,
- an error has been made in calculating the fee.

Currently, if a person pays the fire fee assessment and also files a timely petition for redetermination to dispute that the person is not subject to the fee or that the fee is improperly calculated, CAL FIRE will review the petition as a claim for refund and decide if the fee is due.

The issues involved in these types of claims for refund involve not only the duties of CAL FIRE but also of the Fire Board, which adopted emergency regulations to establish the fire prevention fee and define several key terms. Moreover, the Fire Board classifies all state lands and determines the SRAs. The Fire Board and CAL FIRE work closely with counties and local fire protection districts to review and adjust the SRA boundaries. Notwithstanding the BOE's property tax administrative functions, BOE staff has historically handled diverse issues related to business taxes and fees. This bill would expand the BOE's role beyond its core functions and may challenge current BOE's resources.

**4. Related bills.** Assembly Bill 1519 (Donnelly) deletes the 20% fire prevention fee penalty that is added to final redeterminations for each 30-day period the fee remains unpaid. Assembly Bill 2048 (Dahle et al) among its fire prevention fee provisions, adds definitions, makes permissive the annual rate adjustment, clarifies the imposition of the fee, provides a disaster relief provision, adds a "late protest" procedure, and replaces the 20% penalty with a 10% penalty. SB 1413 (Wyland) extends the date the annual fire prevention fee assessments are due and payable from 30 to 60 days.

## COST ESTIMATE

This bill substantially expands the BOE's fire fee administrative functions to include an appeal of an order or decision on a petition for redetermination that denies all or part of a refund. As discussed previously, BOE staff does not currently have the technical expertise related to fire prevention fee appeal issues. Additionally, the bill not only provides an appeal option, it also changes the finality date of a petition for redetermination from 30 to 90 days. An additional 60 days to consider an appeal in

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<sup>12</sup> RTC Section 19333

<sup>13</sup> RTC Section 19334

which all or part of a refund has been denied could lead to an unknown increase in the number of BOE appeals. An estimate of the cost is pending.

**REVENUE ESTIMATE**

This bill provides an additional 60 days for a petition for redetermination to become final. If an order or decision on a petition for redetermination, not involving a denial of part or all of a refund, were to become final in 90 days, then a revenue impact would be related to the deferral of the 20% penalty of the fee due for each 30-day period during which the fee remains unpaid. There is no interest assessed on the penalty amount.

In FY 2012-13, \$85,320 in late payment penalties were assessed. BOE staff believes that these billings made in the second year of the program administration are more representative of the outgoing years. Given that this is a new fee program and has relatively little collection data, BOE staff estimates that the revenue loss associated with the 60-day deferral of the penalty would be an unknown percentage of the \$85,320.

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